

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DT 06-067

NORTHERN NEW ENGLAND TELEPHONE OPERATIONS, LLC D/B/A
FAIRPOINT COMMUNICATIONS - NNE

FairPoint Communications – NNE Comments and Conditional Request for Hearing

Order Scheduling Hearing

ORDER NO. 25,016

September 23, 2009

On March 21, 2008, the Commission issued Order No. 24,837, concluding that the carrier common line (CCL) charge contained in NHPUC Tariff No. 85, Verizon's access tariff, is properly imposed when: (1) Verizon provides the use of its common line and (2) it facilitates the transport of calls to a Verizon end user. Based on the evidence, the Commission further decided that when the use of Verizon's common line does not involve a Verizon end user, the CCL charge may not be imposed. *Id.* at 27. By virtue of Northern New England Telephone Operations LLC, d/b/a FairPoint Communications — NNE's (FairPoint's) acquisition of Verizon's landlines and its franchise in New Hampshire, NHPUC Tariff No. 85 now applies to FairPoint. *See Verizon New England Petition for Authority to Transfer Assets and Franchise*, Order No. 24,823 (February 25, 2008).

On May 7, 2009, the New Hampshire Supreme Court reversed the Commission's decision in Order No. 24,837, finding, based on a de novo review, that the plain language of the tariff did not comport with the Commission's interpretation of the tariff language. *Appeal of Verizon New England*, No. 2008-0645, slip op (N.H. May 7, 2009).

The order of notice in this proceeding established that, in the event Verizon's interpretation of the current tariffs was found to be reasonable, the Commission would decide whether any prospective modifications to the tariffs are appropriate. On August 11, 2009, the Commission, in Order *Nisi* No. 25,002, directed FairPoint, pursuant to RSA 378:1 and 378.3, to modify its tariff to clarify that FairPoint shall charge CCL only when a FairPoint common line is used in the provision of switched access services. The Commission required that such modifications shall include, at a minimum, revisions to, or removal of, the following tariff provisions:

Section 5: "Carrier common line access service is billed to each switched access service provided under this tariff in accordance with the regulations set forth herein and in Section 4.1, and at the rates and charges contained in Section 30.5."

Section 5.4. 1 .A: "General - Except as set forth herein, all switched access service provided to the customer will be subject to carrier common line access charges."

Section 5.4. 1.C: "The switched access service provided by the Telephone Company includes the switched access service provided for both interstate and intrastate communications. The carrier common line access rates and charges will be billed to each switched access service provided under this tariff in accordance with Section 4.1 and Section 5.4.2."

The Commission also directed that FairPoint file revisions to its NHPUC Tariff No. 85 as outlined above within 30 days from the date of the Commission's order.

On August 28, 2009, FairPoint filed comments and a conditional request for hearing stating its position that: (1) the Carrier Common Line (CCL) charge in its Tariff NH PUC No. 85 is valid as currently applied; (2) the related tariff provisions are clear and unambiguous; and (3) the issues addressed by the Order are outside the scope of this proceeding. FairPoint stated that it planned to file tariff revisions, no later than

September 10, 2009, that restrict billing of the CCL to situations in which the FairPoint local loop is employed. FairPoint also stated its intent to revise other access rate elements to compensate for what it claims are lost contributions to its joint and common costs provided by the CCL. FairPoint asserted that, if revisions to the tariff must be made, it is entitled to the revenue derived from the CCL as currently applied.

On September 4, 2009, Global Crossing Telecommunications, Inc. filed a response, and Freedom Ring Communications, LLC d/b/a BayRing Communications and AT&T Corporation filed a joint response to FairPoint's August 28 filing arguing, among other things, that FairPoint's claim that it is not earning sufficient revenue to cover its expenses is a separate matter, that FairPoint is not entitled to a revenue neutral increase of other switched access rates, and that such an increase would not comply with the Commission's order.

On September 10, 2009, FairPoint filed tariff pages for effect October 10, 2009, consisting of certain revisions to NHPUC Tariff No. 85 to comply with the requirements in Order *Nisi* 25,002. In this filing, FairPoint stated that, in conjunction with its compliance filing, it was filing schedule sheets reflecting revenue neutral adjustments to its switched access rates by increasing the InterConnection Charge from \$.000000 to \$.010164 per minute.

We find that an evidentiary hearing is necessary to address the issues raised by FairPoint's August 28 and September 10 filings as well as the issues raised by the competitive local exchange carriers' September 4 filings. Issues raised include, *inter alia*: whether FairPoint's proposed tariff revisions are just and reasonable; whether the

proposed interconnection charge is consistent with paragraph 9.1 of the Settlement Agreement in DT 07-011 approved by Order No. 24,823; whether the filing is properly considered under RSA 378:6, I or IV; and whether RSA 378:17-a III applies.

Pursuant to NH Admin. Code Puc 1605, FairPoint is required to file supporting documents with a proposed tariff change. FairPoint did not file the required information and, therefore, the filing is not complete. In addition, in order to properly evaluate the proposed change in tariff, pursuant to 1605.02(c), we will require FairPoint to file the information required in Puc 1604.08(c)(9). At the hearing, FairPoint should be prepared to go forward with evidence pursuant to the aforementioned rules and other relevant evidence in support of its position.

Given the time necessary to produce the required information and hear from interested parties, consistent with RSA 378:6, IV, to the extent it controls, we will extend the time for review of the proposed tariff changes for 30 days from the date the filing is complete.

The following procedural schedule shall apply:

Complete filing and FairPoint's written testimony	September 28, 2009
Data Requests to FairPoint	October 5, 2009
FairPoint Data Responses	October 12, 2009
Rebuttal Testimony	October 19, 2009
Technical Session in lieu of discovery on Rebuttal Testimony	October 21, 2009

Reply Testimony

October 26, 2009

Hearing Date

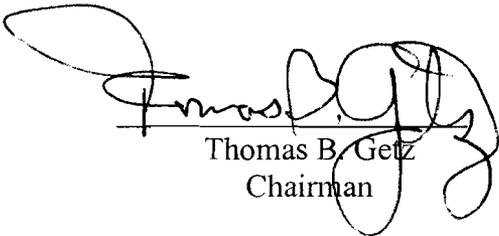
November 4, 2009 at 10:00 a.m.

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule outlined above shall govern the remainder of the proceeding; and it is

FURTHER ORDERED, that FairPoint shall file the information required in NH Admin. Code Puc 1604.08(c)(9) no later than September 28, 2009.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of September, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy Ignatius
Commissioner

Attested by:


Debra A. Howland
Executive Director